

(2001) 12 AP CK 0111

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4676 of 2000

K.V.S.S. Sambhu Prasad

APPELLANT

Vs

Executive Officer, Gram Panchayat and Another

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Andhra Pradesh Gram Panchayat Rules, 1994 — Rule 26(1), 26(2), 33(1), 33(2), 34(2)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 268, 61
Civil Procedure Code, 1908 (CPC) — Section 60
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2002) 1 ALD(Cri) 400 : (2002) 1 ALT(Cri) 227

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Ch. Dhanamjaya, for the Appellant; Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—This is an application filed u/s 482 of the Code of Criminal Procedure to quash the proceedings in S.T.C.No.7 of 1999 on the file of the learned Judicial Magistrate of First Class, Palakole, West Godavari District, in which the petitioner herein is arrayed as the sole accused.

2. The first respondent-Executive Officer, Gram Panchayat, Chinthaparru, Palakole Mandal, West Godavari District initiated proceedings in S.T.C.No.7 of 1999 on the file of the learned Judicial Magistrate of First Class, Palakole against the petitioner herein in the form of charge sheet u/s 61, Schedule-II, Rule 34 (2), 41 of the Andhra Pradesh Gram Panchayat Act, 1994 (for short "the Act") and the rules framed there under. In the complaint, it is inter alia alleged that an amount of Rs.24,272-50 paise is due from A.P. Bagasse Products Limited, Chintaparru represented by its Managing Director towards the "house-tax on assessment No.626 for the year 1998-99 to Chintaparru Gram Panchayat. "A demand notice was sent to the petitioner herein, in his capacity as the Managing

Director of the said company, on 26-8-1999 under the Registered Post as is required under Rule 33 (1) of the Schedule II of the Act, but the same was returned with postal endorsement "refused, returned to sender". It is alleged that the "individual has failed to pay the tax and the distraint is impracticable by obstructing from legitimate duties 34-2 of the Schedule. Therefore, the accused has committed an offence u/s 61 and the rules framed under the Andhra Pradesh Gram Panchayat Act, 1994."

3. The prayer portion is rather interesting and may have to be noticed in the language employed in the complaint itself:

"It is therefore prayed the Honourable court to summon the accused and punish according to Court of Law while recovering the House Tax of Rs.24,272-50 and other expenses incurred by the Gram Panchayat under Rule 41 of Schedule II, of the Andhra Pradesh Gram Panchayat Act, 1994."

4. The short question that falls for consideration is as to whether the non-payment of house-tax due to a Gram Panchayat is an offence punishable under the provisions of the Act or the rules framed there under?

5. The State represented by the learned Additional Public Prosecutor is not in a position to bring any provision either under the Act or the Rules whatsoever to the notice of the court, which makes the non-payment of house-tax due to a Gram Panchayat a penal offence. The learned Additional Public Prosecutor, Sri T. Niranjan Reddy, after making an elaborate investigation and enquiry, brings to the notice of the court the Rules relating to certain taxes and other lodging of moneys received by the Gram Panchayat and payment of money from the Gram Panchayat fund (for short "the Rules") framed by the government in purported exercise of the power conferred by sub-section (1) and clause (xxvii) of sub-section (2) of Section 268 of the Andhra Pradesh Panchayat Raj Act, 1994. The said Rules provide for an elaborate procedure for making assessment of the houses for the purpose of house-tax either on their annual or capital value and for fixation of the house-tax and collection thereof by the Gram Panchayat. However, Rule 26 (1) of the said Rules prescribes the procedure for collection of the house-tax due from the persons to the Gram Panchayat. The said Rule empowers the executive authority to recover the house tax from any person by distraint under his warrant and sale of the movable property of the defaulter. The executive authority is empowered to recover the amount due on account of the tax together with the warrant fee and the distraint fee and with such further sum as will satisfy the probable charges that could be incurred in connection with the detention and sale of the property so distrained. The Rule itself provides that the movable property described in the proviso to Section 60 of the Code of Civil Procedure, 1908, shall not be liable to distraint. The Rule merely prescribes the procedure for recovery of the tax from the defaulter. Sub-rule (2) of Rule 26 says that if for any reason the distraint or a sufficient distraint of the defaulter's property is impracticable, the executive authority may prosecute the defaulter. Prosecute the defaulter for what? There is no further procedure in the matter as

to where the prosecution has to be launched and how and by whom it has to be launched.

6. Rule 33 (1) of the said Rules, however, says that every person who is prosecuted under sub-rule (2) of Rule 26 shall be liable, on proof to the satisfaction of the court that he willfully omitted to pay the amount due by him or that he willfully prevented distraint, or a sufficient distraint, to pay a fine not exceeding twice the amount which may be due by him on account of the tax and warrant fee, if any, and if distraint has taken place, the distraint fee and the expenses incidental to the detention and sale, if any, of the property distrained. Sub-rule (2) of the Rule 33 says that whenever any person is convicted of an offence under sub-rule (1), the court shall, in addition to any fine which may be imposed, recover summarily and pay over to the gram Panchayat the amounts, if any, due under the heads specified in clauses (a) and (b) of sub-rule (1) and may, in his discretion, also recover summarily and pay the gram Panchayat such amount, if any, as he may fix as the costs of the prosecution.

7. But there is no provision brought to the notice of the court, which makes the non-payment of house-tax to a Gram Panchayat a penal offence punishable under the provisions of the Act or the Rules framed there under. Sub-rule (2) of Rule 33 speaks about the conviction of a person of an offence under sub-rule (1) of Rule 33. Rule 33 (1) does not speak about any offence for which one could be convicted. Setting the criminal law in motion is fraught with serious consequences. The penal provision must be clear and unambiguous. The criminal liability cannot be fastened upon an individual on the basis of an unintelligible provision. The provision which is not otherwise penal cannot be construed as a penal one by drawing inference. Rule 33 (1) of the Rules, in my considered opinion, does not make the non-payment of house-tax due to a Gram Panchayat as an offence punishable under the provisions of the Act and the rules framed there under. There is no such provision either in the Act or in the Rules framed there under. The rules are merely procedural in their nature. The Rules speak about the mechanism empowering the executive authority or the Gram Panchayat, as the case may be, to recover the amounts due from the defaulter payable towards house-tax. Non-payment of the house-tax due to a Gram Panchayat is not made an offence under the provisions of the Act and the rules.

8. In the circumstances, the very prosecution launched against the petitioner has no basis in law.

9. The Executive Officer of the Gram Panchayat straight away filed the charge sheet purporting it to be u/s 61, Schedule-II, Rule 34 (2), 41 of the Andhra Pradesh Gram Panchayat Act, 1994. The same is taken on file by the learned Judicial Magistrate of First Class and numbered as S.T.C.No.7 of 1999. It is rather surprising to notice that a charge sheet is filed in a summarily triable case. There is no authority under which the Executive Officer himself could have investigated into the non-payment of the house-tax by treating the same as an offence and file the charge sheet. The whole thing appears to have been taken in a very

casual manner by all the concerned. It is rather difficult to appreciate as to how the learned Judicial Magistrate of First Class could have taken the charge sheet on file, even according to the complainant, in a case which is summarily triable.

10. Viewed from any angle, I find it difficult to sustain the complaint lodged against the petitioner. Any further proceedings would result in abuse of legal process.

11. For the aforesaid reasons, this criminal petition is allowed. The proceedings in S.T.C.No.7 of 1999 on the file of the learned Judicial Magistrate of First Class, Palakole are accordingly quashed.